



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP- 174385

PRELIMINARY RECITALS

On May 13, 2016, the above petitioner filed a hearing request under Wis. Admin. Code §HA 3.03, to challenge a decision by the Kenosha County Human Service Department regarding FoodShare benefits (FS). The hearing was held on June 16, 2016, by telephone.

The issue for determination is whether Petitioner was overpaid FoodShare benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services

By:

[REDACTED]

Kenosha County Human Service
Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

David D. Fleming

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner was sent 2 FoodShare overpayment notices, both dated April 13, 2016, that informed Petitioner that she had been overissued FoodShare in the total amount of amount of \$5327.00. One

notice indicated that Petitioner had been overissued FoodShare in the amount of \$4112.00 during the period of January 1, 2102 through December 31, 2012 and the other that Petitioner was overissued FoodShare in the amount of \$1215.00 during the period of January 1, 2103 to May 31, 2013.

3. The reason for the overissuance alleged here is that Petitioner did not correctly report her household composition and marital status.
4. Petitioner married on July 21, 2011. This was reported to the local child support agency in September 2011. The economic support agency learned of it when it received an alert indicating Petitioner had been added to her husband's medical insurance. This was in January 2012. The agency asked for confirmation of household and was informed that Petitioner and spouse lived separately so the case was coded as separated. Petitioner informed the agency that she and her spouse had two homes – she was renting in the Kenosha area and he owned a home in New Berlin. She indicated that he stayed in the New Berlin home much of the time as he could not sell the house and has a child from a prior marriage in New Berlin and had to get that child off to school. Further, Petitioner informed the agency that the Kenosha residence was not big enough for the blended family.
5. Petitioner and her spouse made several attempts to have child support end as they were married and did not want him to have to pay. This request was declined by child support as they claimed to be living separately and were not in the same household.
6. The agency submissions contain a case note that indicates that another adult was living with Petitioner though not included in the household as that individual purchased and prepared food separately though did not pay rent.
7. If the income of Petitioner's spouse is counted for FoodShare purposes there was no FoodShare eligibility except for February 2013 when the allotment would have been \$145.00 larger than actually issued. That has been accounted for in the overpayment calculation.

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. §273.18(b), see also FoodShare Wisconsin Handbook (FSH), §7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. §273.18(b); see also FSH, §7.3.1.9. However, overpayments due to agency error may only be recovered for up to 12 months prior to discovery. FSH, §7.3.2.1. Overpayments due to client error may be recovered for up to six years after discovery. *Id.*

Federal regulations provide that spouses must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified. 7 C.F.R. §273.1(b)(i). This is echoed in the Wisconsin FS policy that provides:

To determine who is non-financially eligible for FoodShare, you must start with all household members.

H - Households

Households consist of all persons living in, or temporarily absent from, the same Residence. It is important to enter all household members into CWW to ensure that the correct eligibility determination is made in CARES.

...

U - Food Units

One or more persons who live in the same household and purchase and prepare food together for home consumption, or individuals who must be included in the same food unit because of relationship rules (3.3.1.3).

FS Handbook §3.3.1.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

The following individuals must be included in the same food unit, even if they do not purchase and prepare meals together:

1. Spouses,
2. Biological (unless no longer a parent because of adoption), adoptive, or stepparents and their children under the age of 22, **and**
3. Adults and minor children under the age of 18 years over whom they are exercising parental control.

FS Handbook §3.3.1.3.

Here Petitioner argues that the couple was not living together because of the unsold house in New Berlin, the husband's child in New Berlin and the need to find a bigger place that could accommodate all of them. The agency argument is that Petitioner and her husband were reporting themselves as a couple to child support and that they should have reported his income and it should have been used for determining FoodShare benefits.

I am upholding the overpayment for the following reasons. Clearly, Petitioner and her husband wanted to be considered to be together so as to avoid child support payments, yet at the same time wanted to be separate so as to receive the taxpayer funded public FoodShare benefit. Though one of the reasons for allegedly living apart was that Petitioner's residence was too small for Petitioner, the 2 children and the husband, I cannot help but note that another adult was living with Petitioner. It is not apparent what her husband could not live there instead. Further, Petitioner did concede that her husband did stay overnight when possible.

For Petitioner's benefit the following describes repayment provisions:

7.3.2.12 Repayments

A member who makes a repayment agreement may not be subject to tax intercept as long as he or she is meeting the conditions of the agreement. If a member's repayment agreement becomes delinquent, which is defined as three missed payments over the life of the debt and has been sent three dunning, or past due, notices, he or she is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments.
2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.

CONCLUSIONS OF LAW

That the evidence does demonstrate that Petitioner was overissued FoodShare as alleged.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

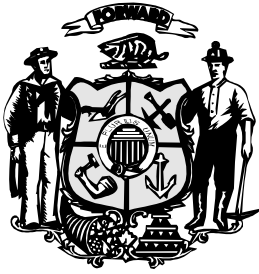
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of July, 2016

\s _____
David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 11, 2016.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability